

## COLORADO DEPARTMENT OF HEALTH CARE POLICY & FINANCING

1570 Grant Street, Denver, CO 80203-1818 • (303) 866-2993 • (303) 866-4411 Fax • (303) 866-3883 TTY Bill Ritter, Jr., Governor • Joan Henneberry, Executive Director

August 10, 2010

Mr. Thomas E. Hamilton
Director, Survey and Certification Group
Centers for Medicare & Medicaid Services
Department of Health and Human Services,
Attention: CMS-2435-P
Mail Stop C4-26-05
7500 Security Boulevard
Baltimore, MD 21244-1850

RE: CMS-2435 P Proposed Rules Medicare and Medicaid Programs, Civil Money Penalties for Nursing Homes

Dear Mr. Hamilton:

I am writing to you on behalf of Colorado's single state Medicaid agency, the Department of Health Care Policy and Financing to provide comment and seek clarification related to proposed rules CMS-2435 P Civil Money Penalties for Nursing Homes under Section 6111 of the Patient Protection and Affordable Care Act. These comments do not address any potential concerns of Colorado's survey and certification agency, the Department of Public Health and Environment.

In order, Colorado has these specific comments on the proposed regulations:

§ 488.331 (a) (3) Informal dispute resolution. It is not explicit whether the opportunity for an independent informal dispute resolution is available for state-operated facilities such as State Veterans Homes as CMS is responsible for imposing any civil money penalties to state-operated facilities. Colorado requests that the language be revised to clarify whether state-operated facilities are included or excluded.

§ 488.431 Civil money penalties imposed by CMS and independent informal dispute resolution: for SNFs, SNF/NFs, and NF-only facilities. Subsection (d) (2) requires that "any collected civil money penalty amount owed to the facility based on a final administrative decision will be returned with applicable interest," implying that the escrow accounts are interest-bearing. Colorado requests that the language in subsection (c) Maintenance of escrowed funds include provision that funds disbursed to the States will also be with applicable interest. Colorado also notes that subsection (c) refers to § 488.431 (e), which does not exist in either current regulation or in the proposed regulations.

§ 488.433 Civil money penalties: Uses and approval of civil money penalties imposed by CMS. The language specifies fifty percent of the collected civil money penalty applicable to <u>Title XVIII</u> (emphasis added) will be deposited with the Department of Treasury in accordance with §488.442 (f) and that, "the remaining collected civil money penalty funds" may not be used for survey and certification operations but rather for activities to protect/improve the quality of care. Colorado has three interrelated concerns with this section: First, Colorado requests that the language be revised to clarify whether the "remaining collected... funds," is limited to the other fifty percent of applicable Title XVIII funds or whether it includes those funds applicable to <u>Title XIX</u> (emphasis added). Second, if the intent is to include Title XIX funds, Colorado disputes the appropriateness of requiring CMS approval for use of those funds beyond existing limitations on allowable uses. Third, Colorado requests a subsection be added to define the process and timeliness safeguards for requesting and receiving that CMS approval, including the opportunity to appeal a CMS denial.

§ 488.438 Civil money penalties: Amount of penalty. The proposed language is not clear about whether the opportunity for the fifty percent reduction in civil money penalty for self-reporting with prompt correction of noncompliance is available for state-operated facilities such as State Veterans Homes as CMS is responsible for imposing any civil money penalties to state-operated facilities. Colorado requests that the language be revised to clarify whether state-operated facilities are afforded this opportunity. Colorado also requests clarification that the 50 percent reduction in civil money penalty is applied to both the applicable Title XVIII and Title XIX funds. Further, the merits of providing an incentive for self-reporting and prompt correction that this reduction allows is equally valuable for facilities where the State imposes the civil money penalty. Therefore, Colorado requests that CMS consider the possibility of adding a provision that allows a similar reduction for facilities where the civil money penalty is State-imposed.

Thank you for the opportunity to provide comment and ask for clarification. Should you have any questions, I can be reached at <u>Barbara.prehmus@state.co.us</u> or via telephone at (303) 866-2991.

Sincerely,

Barbara B. Prehmus, M.P.H.

Federal Policy & Rules Officer

Cc: Ms. Joan Henneberry, Executive Director

Ms. Lorez Meinhold, Director of Health Reform Implementation & Senior Health Policy Analyst, Colorado Governor Bill Ritter, Jr.

Mr. Howard Roitman, Colorado Department of Public Health and Environment

Ms. Cynthia Mann, Center for Medicaid, CHIP, Survey & Certification

Ms. Ann C. Kohler, NASMD Director